

DIFFICULTIES IN OBTAINING CONSENT

What would **you** do?

You want to admit Florence, a one-year-old Hungarian Visla, for fluid treatment and investigation of vomiting. You suspect a foreign body and that after imaging you may need to go to surgery. Mrs C, Florence's owner, is in a great rush and leaves the practice without you being able to give a full explanation of what you expect to do, not having signed a consent form. What should you do?



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9.4 Florence has always chewed things and now, when she needs veterinary investigation, her owner has rushed off without signing a consent form.

PHOTO ANNE FAWCETT

In this next scenario we consider a difficult situation where there are two owners, but only one who consents to euthanasia.

SCENARIO

SPLIT CONSENT

► For several years you've been intermittently seeing Plucky, who is now a 22-year-old gelding kept as a pet by Mr and Mrs M. They are clearly very fond of Plucky, but have never been able to afford a lot of veterinary care. Three days ago Plucky started showing signs of colic. Your initial rectal examination was inconclusive – you may have palpated some kind of impaction, but it was impossible to be sure. The Ms have repeatedly declined further diagnostics or exploratory surgery on cost grounds. You've trialled various medical therapies, but Plucky's clinical signs have progressed from mildly elevated respiratory and heart rates, to severe signs now unresponsive to strong analgesics and enteral fluids.

Earlier today, however, Mr and Mrs M consented to admit Plucky to your hospital for intravenous fluids, medical treatment and monitoring, and then went home. Plucky has now begun pacing violently in his stable and has started kicking and thrashing. Surgery is now clearly necessary.

You've informed Mr and Mrs M by phone that given that surgery is not a financial option for them, Plucky should be euthanased without further delay on humane grounds. Mrs M has reluctantly agreed, but Mr M cannot bring himself to accept this. Your colleagues are now also becoming distressed by the situation, and are heatedly discussing it, unsure what to do. They all want to euthanase Plucky, but you do not have consent from both owners.

What should you do?

RESPONSE

ANDREW KNIGHT

► The essence of this dilemma is that your duty to your patient potentially conflicts with your duty to your client. On the one hand it seems clear that without surgery, Plucky's prospects for recovery are very poor. He is clearly suffering, with clinical signs now so severe that they're unresponsive to strong analgesics and enteral fluids. To prevent further severe suffering associated with what would almost certainly be an inevitable decline toward death, Plucky should clearly be euthanased on humane grounds. On the other hand, you lack clear consent from the clients. Ms M has agreed, but Mr M has not. In such circumstances, what should you do?



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9.5 Plucky appears in pain and surgery or euthanasia is needed.

PHOTO ISTOCK

Although as a veterinarian you do have duties to your clients, your employing practice, the wider public, the veterinary profession and yourself, it is clear within the field of veterinary professional ethics and the statements of veterinary professional associations in countries such as the UK and USA that your primary duty must always be to your patient. The AVMA (2016) Principles of Veterinary Medical Ethics, for example, state that, "Veterinarians should first consider the needs of the patient: to prevent and relieve disease, suffering, or disability while minimizing pain or fear." The RCVS (2015) Code of Professional Conduct for Veterinary Surgeons similarly states that, "Veterinary surgeons must make animal health and welfare their first consideration when attending to animals." Indeed, this is the expectation that society at large has of veterinarians, physicians and other healthcare workers. In return for entrusting these professionals with sensitive personal information and the authority to recommend treatment courses, society has a serious and reasonable expectation that they will give primacy to the interests of their patients, ahead of considerations such as commercial or self-interest, the demands of family members or animal owners who may not always be reasonable, or indeed, any other interests. Only rare exceptions are permitted, such as the duty to safeguard wider public or animal health, for example, when outbreaks of serious, transmissible animal diseases occur, whether zoonotic or otherwise.

No such exceptions being present in this case, it is clear that your primary duty is to Plucky, rather than his owners. However Plucky does remain their legal property, which creates a problem, because if you effectively destroy your client's property without their consent, you could face a range of potentially serious consequences. These include the stressful and protracted process of attempting to defend yourself

should the clients formally complain about your conduct to the veterinary licencing board, or take independent legal action to sue you or your veterinary practice for the recovery of their financial and other damages. In the worst-case scenario your veterinary licencing board could revoke your licence to practise veterinary medicine, temporarily or permanently. Even a successful civil suit could result in you or your employer having to pay the costs of replacing Plucky, and a potentially wide range of other legal and associated costs, which demonstrates the importance for veterinarians of maintaining their professional liability insurance, which was primarily created to cover such payouts. Another potentially serious consequence could be reputational damage for you and your practice, if the aggrieved clients or local journalists were to publicise the case in a one-sided manner, e.g. through social networking, or in the local newspapers. Hence, if you fulfil your primary duty and euthanase Plucky, you not only arguably fail to uphold your duty to your clients, but could also risk quite significantly damaging your own interests (your career may be at risk), the interests of your practice and even the interests of the wider veterinary profession (if this case damages public trust in it).

Unfortunately for you, at this point you are unlikely to be able to decline to have these people as your clients. Although veterinarians are free not to accept clients initially, once treatment has commenced, they may not then abrogate their responsibilities and are generally obligated to continue treatment. The AVMA (2016) Principles of Veterinary Medical Ethics, for example, state that, "Once the veterinarian and the client have agreed, and the veterinarian has begun patient care, they may not neglect their patient and must continue to provide professional services related to that injury or illness within the previously agreed limits." This demonstrates the importance of a clear prior agreement about treatment. Given the guarded

nature of Plucky's prognosis without the recommended surgical intervention, this should probably have included an agreement about the course of action should medical treatment prove unsuccessful. Given that Plucky's admission was not an emergency, the agreement about treatment should have been accompanied by a signed owner consent form.

Nevertheless, in this particular case it appears that clear prior agreement has not been obtained about euthanasia, should it become necessary, and the clients currently remain unable to agree, so unfortunately your dilemma remains. Your clear overriding duty is to your patient, but fulfilling that duty by euthanasing Plucky without clear owner consent carries substantial risks. At this stage it would be wise to ensure you clearly understand the relevant laws and professional guidelines within your jurisdiction. Some jurisdictions might state, for example, that euthanasia without owner consent is illegal, although such explicit statements are rare. In others, owners or, arguably, veterinary staff, might be liable under animal protection legislation for failing to provide care considered medically necessary, to animals for which they have a responsibility, although lack of owner consent *might* provide a defence. Veterinary associations might also be able to offer advice about relevant clauses within veterinary practice Acts, licencing board regulations, or professional guidelines. This case has evolved over several days, which would hopefully have given you time to check these matters with parties likely to be knowledgeable, such as any more experienced colleagues, your practice lawyer, your veterinary association or licencing board, or your professional liability insurer. And of course you could also do your own research – most relevant material is now available online. Arguably the most difficult situation arises when the law, regulations or professional policy dictates a course of action that clearly conflicts with your primary professional duty to your patient.

If you do decide to euthanase Plucky, there are several steps it would be wise to take, to increase the defensibility of your action, if later challenged through private litigation or a complaint to your veterinary licencing board. Firstly, you should ensure the medical history of this case is clearly documented, particularly the deterioration in clinical signs to the point where it has become clear that your duty to Plucky warrants euthanasia. This should ideally be supplemented with video or photographic evidence of his clinical signs. Next, you should obtain at least one second opinion in writing from a veterinary colleague – ideally, an experienced equine veterinarian – confirming that euthanasia is warranted. To minimise suffering, you should anticipate the likely need for these and obtain them without delay. Finally, in many jurisdictions there are various legal officials, such as SPCA, humane society or animal control officers, or police constables, who do have the lawful authority to order euthanasia in the absence of owner consent. If possible a written (or at least, verbal and preferably witnessed) order should be obtained from such an official authorising euthanasia. To minimise delay, this outcome should be anticipated, with initial communications to that official as the case progresses. Veterinarians are generally permitted by their professional ethical standards to violate client confidentiality by discussing a case in this way, if they believe animal or public health may be at risk.

Depending on the level of protection afforded in the jurisdiction by animal protection legislation, and the cooperation of officials able to authorise euthanasia etc., this sort of case could provide an extremely challenging ethical dilemma. It essentially asks the veterinarian, “How far should I be prepared to go, to uphold my primary duty to the patient under my care? What price should I ultimately be willing to pay?” Given carefully documented evidence of the necessity of euthanasia

in such a case, it seems unlikely that any sanction applied by a court or veterinary licencing board would be severe, if it were even upheld. However, the element of doubt could remain. Such a dilemma poses deep questions about personal values, to which the answers will vary among individuals. Nevertheless, in most jurisdictions the primary duty of the veterinarian to the patient under their care does remain clear. And if an animal’s veterinarian will not act to end their suffering, who will?

THE author is clear that the priority of the veterinarian is their duty towards their animal patient. Importantly, as well as proposing a course of action, he identifies several practical ways to minimise any potential negative consequences of the action. This form of refinement can be employed in all decisions and can help to mitigate some of the negative consequences or promote positive outcomes. For example, even if it is decided that a nervous cat needs hospitalisation, refinement could include having hiding places in the cage, being positioned in a quiet area of the ward and asking staff to keep out of the area.

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